IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.MC.No. 1273 of 2007()

CC.593/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI

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PETITIONER:

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1. KUNHEEN, S/O.MOHAMMED, PENGINIKADAVU, CHERUMUKKU P.O., NANNAMBRA.

2. UMMATHA, W/O.MOHAMMED, PANGINIKADAN, CHERUMUKKU P.O., NANNAMBRA.

3. SAFIYA, W/O.HAMZA, PENGINIKADAN, CHERUMUKKU P.O., NANNAMBRA.

4. MOIDEENKUTTY, S/O.MOHAMMED, PANGINIKKADAN, CHERUMUKKU P.O., NANNAMBRA.

5. PATHUMMA, W/O.MOIDEENKUTTY, PANGINIKKADAN, OF DO. DO.

6. RAMLA, W/O.IBRAHIM, PANGINIKKADAVU, DO. DO. DO.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY STATION HOUSE OFFICER, TANUR POLICE STATION, THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. KOTTEKKARAN, MANAPPURATH RAMLA, S/O.KUNHIKOYA, PANGINIKKADAN HOUSE, P.O.CHERUMUKKU, NANNAMBRA, MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1273 OF 2007

Dated this the 25th day of May, 2007

ORDER

The petitioners are accused who face allegations under Sec.498A read with Sec.34 of the IPC. Cognizance has been taken of the offence punishable under Sec.498A read with Sec.34 of the IPC against them on the basis of a final report submitted by the police. Investigation in that crime commenced on the basis of a private complaint filed by the 2nd respondent before the learned Magistrate which was referred by the learned Magistrate to the police under Sec.156(3) of the Cr.P.C. The crux of the allegations is that the 1st petitioner – husband and his relatives were guilty of matrimonial cruelty of the culpable variety against the 2nd respondent.

2. The petitioners have come to this Court with the grievance that the allegation raised against them under

Sec.498A of the IPC is not maintainable and is liable to be quashed invoking the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C.

3. What are the reasons? The learned counsel for the petitioners submits that about an incident which took place on 4/6/04, the 2nd respondent had raised a complaint before the police and the same was registered as Crime No.142/04 of the Tanur Police Station. Annexure-A2 is the F.I.R. Investigation has been conducted in that crime and final report has been filed against the petitioners alleging the offences punishable under Secs.323 and 341 of the IPC. It is later that the complaint dated 12/8/04 a copy of which is produced as Annexure-A3 was filed and the learned Magistrate referred it to the police for investigation. In that complaint allegation under Sec.498A of the IPC was also raised. The learned counsel contends that the allegations under Secs.341 and 323 read with Sec.34 of the IPC about the incident on 4/6/04 having been raised against all the accused in the final report submitted after investigation of Annexure-A2 – F.I.R., the subsequent final report filed under Sec.498A of the IPC is not maintainable.

4. I am unable to accept this contention at all. The

complaint in Annexure-A1 was about a specific incident that had taken place on 4/6/04; whereas the allegation in the subsequent private complaint and the final report by the police relates to a course of conduct adopted by the accused persons while the matrimony continued. I am, in these circumstances, unable to agree that the second complaint is not maintainable because of the earlier complaint made about the specific incident on 4/6/04. Of course, the petitioners shall be at liberty to seek consolidation of charges and conducting of a common trial. Request to that effect can be made before the learned Magistrate. I find no reason, in these circumstances, to invoke the powers under Sec.482 of the Cr.P.C.

5. This Crl.M.C. is, in these circumstances, dismissed with the above observations.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge